

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Criminal Miscellaneous Application No. 1033 of 2023**

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Date	Order with signature of Judge
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1. For orders on MA No.15765/2023
2. For order on office objection & reply of advocate at flag "A"
3. For order on CMA No.15766/2023
4. For hearing of main case

**29.12.2023**

Mr. Muhammad Arshad Tariq, advocate for the applicant

1. Urgent application is granted.
2. Deferred.
3. Granted subject to all just exceptions.
4. This is an application per section 561-A Cr.P.C. assailing an order of the Court of XII Additional District and Sessions Judge Karachi-East dated 13.12.2023, rendered in Cr. Misc. Application No.5521/2023. Operative part is reproduced herein-below:-

*"I have heard learned counsel for the petitioner, learned advocate proposed accused and gone through the contents of instant application, report of the concerned SHO, as well as the material available on record. Examination of record shows that in application made by the petitioner to the SHO he himself has admitted that he had to pay some outstanding amount to the proposed accused. Admittedly there was a business relationship between the parties and allegedly applicant has failed to make payments to the proposed accused. The dispute between the parties pertains to business which is a civil matter. Seemingly applicant has tried to convert it into criminal litigation, as such malafide on the part of petitioner to falsely implicate the proposed accused person cannot be rule out. Ex-Officio Justice of Peace, in exercise of powers under s. 22-A Cr.P.C. is not supposed to proceed and act mechanically by simply considering the version of events narrated by party applying for registration of an FIR, but instead, in order to safeguard against misuse or abuse of such power Ex-Officio justice has to apply his judicial mind and has to satisfy himself that prima facie some material is available on record to support such version. On the same line I am fortified by dictum laid down in case law reported as 2009 YLR 1533 Muhammad Arif v. the state, the Hon'ble High Court of Sindh observed as under: -*

*"Not always necessary to direct the police to register the F.I.R. if on the face of it application filed by the complainant appeared to be malafide... No doubt before passing the order of*

*registration of F.I.R. no enquiry was necessary; but Justice of Peace had to apply his mind to form an opinion about the commission of a cognizable offence and it was not obligatory for the Justice of Peace to issue direction in every case irrespective of the facts and circumstances of the case”.*

*5. In the light of above attending circumstances and case law. I am of the view that the applicant has not made out case for registration of FIR. However, protection to individual's life is guaranteed by Constitution of Pakistan and its fundamental right of every subject. The grounds taken in the application requires consideration, as such, the SHO of concerned P.S is directed to provide protection to petitioner under scheme of law, at the hands of proposed accused. However, this order shall not affect any enquiry, proceedings or trial, if, already pending against the petitioner. Consequently, protection allowed, application in hand stands disposed of in above terms.*

Per applicant's counsel the record of the case was not perused in its proper perspective by the court, hence, this application may be allowed and an FIR may ordered to be registered.

Heard and perused. This is an application per section 561-A Cr.P.C.<sup>1</sup>, therefore, the applicant is required to make out a *prima facie* case that invocation of jurisdiction is merited to prevent abuse of process or to secure the ends of justice.

The impugned order is well reasoned and the applicant's counsel has failed to demonstrate any infirmity in respect of the impugned order or that it could not have been rested upon the rationale relied upon. Furthermore, nothing has been placed before this court to suggest that there is any abuse of process of court or that the ends of justice are in peril, hence, no case is made out to warrant any interference therewith.

In view hereof, this criminal miscellaneous application and listed applications are hereby dismissed *in limine*.

Judge

Amjad/P.A

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<sup>1</sup> Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code; or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.